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In re Application of YOSHIMURA et al.
Application No.: 10/523,120
PCT Application No.: PCT/JP04/02756
Int. Filing Date: 04 March 2004
Priority Date Claimed: 17 March 2003
Attorney Docket No.: ASA-007
For: STATION

DECISION ON
PETITION UNDER
37 CFR 1.181

This decision is in response to applicants' "Facsimile Response" filed in the United States Patent and Trademark Office on 24 June 2005 which has been treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. The petition is **GRANTED**. However, for reasons below, applicants have not yet forwarded the required basic national fee.

BACKGROUND

On 04 March 2004, applicants filed international application PCT/JP04/02756 designating the United States. The international application claims priority date of 17 March 2003. The deadline for paying the basic national fee in the United States is thirty months from the priority date, that is 17 September 2005.

On 24 January 2005, applicants filed a transmittal letter for entry into the U.S. national stage under 35 U.S.C. 371, which was accompanied by, *inter alia*, a copy of the international application as required by 35 U.S.C. 371(c)(2), an executed declaration as required by 35 U.S.C. 371(c)(4), and authorization to charge the basic national fee of \$1000 to applicants' credit card. The credit card was declined, and thus the basic national fee was not paid.

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On 20 June 2005, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that the basic national fee was not paid due to credit card being declined.

On 24 June 2005, applicants filed the instant facsimile response accompanied by, *inter alia*, a new credit card payment form for the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

DISCUSSION

§ 37 C.F.R. 1.6, **Receipt of correspondence**, states, in part:

“(d) *Facsimile transmission*. Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt ... cover sheet. Facsimile transmission are not permitted and, if submitted will not be accorded a date of receipt in the following situation:

(3) Correspondence which cannot receive the benefit of the certification of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D) and (F), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile.”

§ 37 C.F.R. 1.8, **Certificate of mailing or transmission**, states, in part:

“(a) Except in the situations enumerated in paragraph (a)(2) of this section as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(2) The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on, the following:

(i) Relative to Patents and Patent Applications

(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b).”

§ 37 C.F.R. 1.495, **Entering the national stage in the United States of America**, states, in part:

“(b) To avoid abandonment of the application, the applicant shall furnish the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date:

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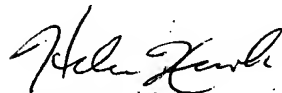
(2) The basic national fee (see § 1.492(a)).”

Accordingly, with regards to § 37 C.F.R. 1.8(a)(2)(i)(F), the required basic national fee has not been paid. Thus, applicants have not met the requirements under 35 U.S.C. 371(c)(1) for the reasons discussed above. Furthermore, according to 37 CFR 1.495, the Notification of Abandonment (Form PCT/DO/EO/909) was inadvertently mailed since the deadline to meet the requirements for entering into the national stage in the United States is thirty months from the priority date, that is 17 September 2005. Payment submitted by credit card authorization faxed 24 June 2005 has been credited back to such credit card.

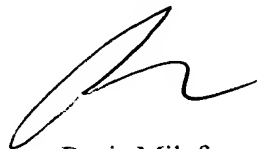
CONCLUSION

For the reasons discussed above, the petition under 37 CFR 1.181 is **GRANTED**. However, applicants have not submitted the basic national fee as required under 35 USC 371 1.371(c)(1). To avoid abandonment, applicants must furnish such fee prior to the expiration of 30 months from the priority date. See 37 CFR 1.495(b).

The application is being returned to the Office of PCT Operations to await receipt of the payment of the basic national fee.



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